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4161491	Confirmed	Notices, Opinions	Board of Zoning Adjustment - Order No. 18496 - Mid-Cities LLC - ANC 3F	2/15/2013 Vol 60/7	2/11/2013 12:27:53
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ZONING COMMISSION  
District of Columbia

CASE NO. 10-14

EXHIBIT 106

ZONING COMMISSION  
District of Columbia  
CASE NO. 10-14  
EXHIBIT NO. 60

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**ZONING COMMISSION ORDER NO. 10-14**  
**Z.C. Case No. 10-14**  
**Big Bear Cafe**  
**(Map Amendment for 1700 1st Street, N.W. Square 3103, Lot 800)**  
**January 14, 2012**

The Zoning Commission for the District of Columbia (the "Commission"), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 787; D.C. Official Code § 6-641.01), and § 102 of Title 11 of the District of Columbia Municipal Regulations ("DCMR"), having held a public hearing to consider the application from Stuart Davenport (the "Applicant"), and having referred the proposed map amendment to the National Capital Planning Commission ("NCPC") for a 30-day review pursuant to § 492 of Title IV of the District of Columbia Home Rule Act (the "District's Charter"), approved December 24, 1973 (87 Stat. 774; D.C. Official Code § 6-641.02), hereby gives notice of its adoption of an amendment to the Zoning Map of the District of Columbia that rezones Lot 800 in Square 3103 from the R-4 Zone District to the C-2-A Zone District.

**FINDINGS OF FACT**

1. On May 27, 2010, the Office of Zoning received an application from the Applicant requesting the Commission to rezone Lot 800 in Square 3103 from the R-4 Zone District to the C-2-A Zone District ("Application"). The Commission voted unanimously to set down the Application for a public hearing as a contested case at its July 26, 2010 public meeting.
2. The property consists of 1,222 square feet of land area and is situated at 1700 1<sup>st</sup> Street N.W., at the northwest intersection of 1<sup>st</sup> Street, N.W., and R Street, N.W. (the "Property"). The Property is currently improved with a two-story building used as a coffee shop/restaurant-style cafe and residential housing. The Property has been residentially zoned, but commercially used, since the existing building was built in 1891.
3. Since the setdown of the case, and with the support of the Office of Planning ("OP"), the "Comprehensive Plan Amendment Act of 2010" amended the Future Land Use Map of the Comprehensive Plan ("Comprehensive Plan") and designated the Property for Mixed-Use: Low-Density Residential and Low-Density Commercial uses. The proposed map amendment from residential to commercial will ensure the zoning designation for the Property is consistent with the amended designation on the Future Land Use Map.
4. The Property is designated within a Neighborhood Conservation Area on the Generalized Policy Map. The Property is also within the North Capitol Street/Florida/New York Avenue Policy Focus Area located in the Mid-City Planning Area Element of the Comprehensive Plan.
5. Square 3103 is split-zoned between the C-2-A and R-4 Zone Districts. The R-4 portion of the square generally consists of two-story single family dwellings, flats, and apartment

houses. The southwest portion of the square is zoned C-2-A and is comprised of residential and commercial uses. The Property is proximate to a commercially zoned (C-2-A) area on Florida Avenue.

6. On May 18, 2012, the Applicant submitted a Prehearing Statement (Exhibits ["Ex."] 14, 15). The Prehearing Statement included as an attachment a petition signed by 422 people in support of the Application as well as a map showing the proximity of these supporters to the Property.
7. On August 28, 2012, the Applicant submitted a Supplemental Filing which provided clarification regarding the current nonconforming structure and use of the Property. (Ex. 35.) In addition, the Applicant provided an update on community outreach and support.
8. Notice of the public hearing was given in accordance with the provisions of 11 DCMR §§ 3014 and 3015.
9. The parties to the case were the Applicant, Advisory Neighborhood Commission 5C ("ANC") (the ANC in which the Property is located), and an unincorporated association of several neighbors who identified themselves as "The Lewis Group".
10. On September 17, 2012, the Commission held a public hearing on the Application. The Applicant presented testimony and exhibits (including a PowerPoint presentation) in support of the Application. Applicant's PowerPoint presentation is marked as Exhibit 40 in the record.
11. By letter dated August 21, 2012, ANC 5C indicated that at a duly noticed and regularly scheduled meeting, on the same date, and with a quorum of the ANC commissioners present, the ANC voted unanimously to support the proposed zoning map amendment. (Ex. 26.) Such action superseded and replaced earlier ANC action set forth in the record as Exhibit 22.
12. OP reviewed the Applicant's proposal to rezone the property to the C-2-A Zone District and, in its report dated March July 16, 2010, recommended that the Application be set down for public hearing. In this report, OP noted it had made the recommendation to change the Future Land Use Map to fully designate the Property as Mixed-Use: Low-Density Residential and Low-Density Commercial. OP stated the purpose of the amendment was to "correct a map error and to provide consistency between the Future Land Use Map and the existing use [of the Property] and to acknowledge the existing and historic use of the site as commercial." (Ex. 10.)
13. OP submitted a final report, dated September 7, 2012, and opined that the requested map amendment would not be inconsistent with the Comprehensive Plan and recommended

approval of the Application. (Ex. 27.) OP also testified at the hearing in support of the Application.

14. The Department of Transportation ("DDOT") reviewed the Applicant's proposal to rezone the property to the C-2-A Zone District and, in its report dated September 7, 2012, found that the proposed map amendment will cause no adverse impacts to the District's transportation network. (Ex. 34.)
15. Among the letters of support in the record are the following: support from Councilmember Vincent Orange, Sr., ANC/SMD03 Commissioner Hugh Youngblood, and Councilmember Kenyan McDuffie. (Ex. 25, 32, 33.)
16. City First Bank of DC submitted a letter into the record stating that the current residential zone for the Property makes it much more difficult for the Applicant to qualify for a commercial real estate loan than if the Property were commercially zoned. (Ex. 37.)
17. "The Lewis Group" was granted party status as a party in opposition. The following witnesses testified at the hearing on behalf of The Lewis Group: Karla M. Lewis (copy of testimony, Ex. 41), Peter J. Knockstead (copy of testimony, Ex. 43), Harold M. Pelham (copy of testimony, Ex. 42), Edward Jones, Bernard Banks (copy of testimony, Ex. 45), Selma Dillard, and Angela Otts.
18. By letter dated July 21, 2012, Bloomingdale Civic Association, Inc. ("BCA") indicated that at a duly noticed and regularly scheduled meeting on July 6, 2012, and with a quorum present, the BCA voted unanimously to support the proposed zoning map amendment. (Ex. 31.)
19. John Salatti, Vice President of the BCA, testified at the hearing in support of the map amendment.
20. At the conclusion of the hearing, the record was closed except for the following: the Commission requested that the Applicant engage the Lewis Party to discuss their issues in the hopes of mitigating as many of the adverse impacts as possible, and the record was open for the Applicant to submit a status report with regard to its negotiations with the Lewis Group" by September 24, 2012, and for the Lewis Group to respond by October 1, 2012.
21. Such a status report was filed by the Applicant as a post hearing submission on September 24, 2012. (Ex. 50.) On October 1, 2012, The Lewis Group filed a response to the Applicant's post-hearing submission. (Ex. 53.)
22. The Commission held a public meeting on October 15, 2012 and considered the submissions by the Applicant and The Lewis Group. The Commission decided to give the

parties more time to meet and try to reach agreement, and left the record open for the Applicant to provide their report by November 6, 2012, and for The Lewis Group to respond by November 13, 2012.

23. The Applicant submitted its second post-hearing status report on November 6, 2012, and the Lewis group submitted its report on November 13, 2012. (Ex. 54, 55.)
24. The Commission held a public meeting on November 19, 2012 and considered the submissions by the Applicant and The Lewis Group. The Commission also re-opened the record to receive a supplemental report by ANC 5C. (Ex. 57.) The report stated ANC 5C's continued support for the Application.
25. Based upon the testimony and evidence presented, as well as the DDOT and OP reports, the Commission finds that the proposed rezoning is consistent with numerous elements of the Comprehensive Plan, including, among others, policies to expand the retail sector, create additional shopping opportunities, promote neighborhood commercial vitality, and protecting small and locally owned businesses. The Commission also finds that the proposed map amendment would create favorable conditions for the District and satisfies each of the statutory standards applicable to map amendments.
26. The Commission further finds that the map amendment would permit commercial and residential functions as a matter-of-right on the Property and would implement the Future Land Use Map's designation of the Property for Mixed-Use: Low-Density Residential and Low-Density Commercial uses; would place the Property in a zone more consistent with the Property's long history of commercial usage; and would help to reinforce elements of the Mid-City Area Element of the Comprehensive Plan.
27. The Commission further finds that the increase in the potential building envelope permitted as a result of the rezoning is small, and would therefore not have an adverse impact on the surrounding properties.
28. The Commission took proposed action to approve the map amendment at its public meeting on November 19, 2012. Pursuant to § 492 of the District's Charter, the Commission referred its proposed decision of approval to NCPC for review and comment.
29. By delegated action dated December 12, 2012, the NCPC Executive Director found that the proposed map amendment would not be inconsistent with the Comprehensive Plan for the National Capital, nor would it have an adverse impact on any other federal interest. (Ex. 59.)

**CONCLUSIONS OF LAW**

1. The Commission's authority to amend the Zoning Map derives from the Zoning Act of 1938, effective June 20, 1938 (52 Stat. 797, D.C. Official Code § 6-641.01) ("Zoning Act").
2. Section 1 of the Zoning Act, authorizes the Commission to regulate the uses of property in order to "promote the health, safety, morals, convenience, order, prosperity, or general welfare of the District of Columbia and its planning and orderly development as the national capital." (D.C. Official Code § 6-641.01.)
3. Section 2 of the Zoning Act provides that the "zoning regulations shall be designed to lessen congestion on the street, to secure safety from fire, panic, and other dangers to promote health and the general welfare, to provide adequate light and air, to prevent the undue concentration and the overcrowding of land, and to promote such distribution of population and of the uses of land as would tend to create conditions favorable to health, safety, transportation, prosperity, protection of property, civic activity, and recreational, educational, and cultural opportunities, and as would tend to further economy and efficiency in the supply of public services. Such regulations shall be made with reasonable consideration, among other things, of the character of the respective districts and their suitability for the uses provided in the regulations, and with a view to encouraging stability for the uses provided in the regulations, and with a view to encouraging stability of districts and of land values therein." (D.C. Official Code § 6-641.02.)
4. Section 3 of the Zoning Act, among other things, authorizes the Commission to amend the zoning regulations and maps. (D.C. Official Code § 6-641.03.)
5. The Commission concludes that the proposed map amendment is consistent with the purposes of the Zoning Act. The amendment will allow use of the Property consistent with its designation on the Future Land Use Map for low-density residential and low-density commercial uses.
6. In amending the Zoning Map, the Commission is constrained by the limitation of § 492(b)(1) of the District of Columbia Home Rule Act, D.C. Official Code § 6-641.02, that the Zoning Map be "not inconsistent" with the Comprehensive Plan. The Commission concludes that approval of the requested map amendment is not inconsistent with the Comprehensive Plan. The requested map amendment furthers the goals of the Comprehensive Plan, and promotes orderly development in conformity with the Zone Plan as embodied in the Zoning Regulations and Map.
7. The Commission also concludes that the requested map amendment is in the best interests of the District of Columbia and will benefit the community in which the Property is located.

8. The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) to give great weight to issues and concerns expressed in the affected ANC's written recommendation. The Commission concurs with the ANC's recommendation for approval, and has given it the great weight to which it is entitled.
9. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code § 6-623.04) to give great weight to OP recommendations. The Commission concurs with the OP's recommendation for approval, and has given the recommendation the great weight to which it is entitled.

### **DECISION**

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of the Application for an amendment of the Zoning Map to change Lot 800 in Square 3103 from the R-4 Zone District to the C-2-A Zone District.

In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code §§ 2-1401.01 et seq. ("Act"), the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination which is prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

On November 19, 2012, upon the motion of upon the motion of Commissioner May, as seconded by Commissioner Turnbull, the Zoning Commission **APPROVED** this Application at its public meeting by a vote of **3-0-2** (Anthony J. Hood, Peter G. May, and Michael G. Turnbull to approve; Marcie I. Cohen and Robert E. Miller, not having participated, not voting.)

On January 14, 2013, upon the motion of Chairman Hood, as seconded by Commissioner May, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **3-0-2** (Anthony J. Hood, Peter G. May, and Michael G. Turnbull to adopt; Marcie I. Cohen and Robert E. Miller, not having participated, not voting).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become effective upon publication in the *D.C. Register*; that is on February 15, 2013.